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STATE SANCTIONED DEATH: A MULTIDISCIPLINARY INQUIRY INTO THE LEGALITY AND ETHICS OF CAPITAL PUNISHMENT

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ABSTRACT

India is a rapidly developing nation, yet at the same time, many crime rates are rising. Even though crime rates are rising in India due to insufficient consequences for crimes, there are numerous laws in place to prevent and manage crime. To lower the crime rate, harsh penalties are necessary. The goal behind all penalties is to hold the offender accountable. In India, there are various forms of punishment, including the death penalty, life in jail, and incarceration, among others. The death penalty imposed by the state as a result of a crime is also known as the capital punishment. In today's society, the effectiveness of this punishment is hotly contested. Abolitionists argue that the death penalty is immoral from an ethical perspective due to unfairness in sentencing and violations of human rights. The "eye-to-eye approach" and "deterrent theory" are the main justifications offered by proponents of the death penalty for their support of this type of punishment; nonetheless, a number of Indian court rulings have stressed the need to use this form of punishment only in the "rarest of the rare" circumstances. The death penalty is regarded as the harshest type of punishment. This essay defines the term "capital offence" and discusses the state of the death penalty globally. It also describes how the death penalty is applied in India. The two main theories of the death penalty—preventive theory and reformatory theory—are explained in this article. The researcher also discussed the rarest of rare cases in this study. This article discussed the use of the death penalty in ancient India as well as abolitionist and retentionist nations. This page provides a thorough analysis of both the Indian execution procedures and the death penalty.

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LITERATURE REVIEW

Numerous scholars and legal experts have questioned the morality of the death penalty. The author used the journal paper "Poverty and Death Penalty" to thoroughly examine the unethical class prejudice in the death penalty. This article clearly demonstrated the connection between poverty and the death penalty as well as the differential treatment of disadvantaged and privileged offenders.

The author used the concept of recidivism in India to get a clear picture of why the death penalty does not work to discourage recidivists. The author was able to comprehend the failure of the deterrent idea of the death penalty thanks to this work.

Furthermore, On Capital Punishment goes into great detail into the unethical aspects of the death penalty. When it comes to defending the death penalty, this essay discusses the "eye to eye" perspective of society in great detail.

The author has dissected a journal paper named "Locke on Death Penalty" in order to remove bias and obtain insight on opposing viewpoints. This essay goes into great detail regarding the "Rights of nature" that a state has to uphold in order to establish a civil society.

The author cited the book "Capital Punishment: The Death Penalty Debate" in order to comprehend both sides of the issue at the same time. Opinions, laws, and anecdotes supporting either side are covered in great detail in this book.

The works of Philosophers like John Locke, Immanuel Kant and Cesare Beccaria were also studied to balance the opinions in the study. The author has identified that the existing literature does not anatomize the ethical perspective of Capital Punishment through the lens of legal provisions and judicial Pronouncements. The author aims to fill this gap of literature through this paper.

INTRODUCTION

"The law must be stable, but it must not be still," as Roscoe Pound once said. One The definition and intensity of "punishment" have changed over time. Law is the result of recognised human conduct norms supported by legal authority. With the exception of the reach of legal penalty, it is similar to the definition of ethics. Two points of view are produced by ethics: right and wrong. Since the beginning of law, it has been believed that societies must be structured in order to uphold moral loyalty and norms of appropriate behaviour through the use of punishment. "Any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgement and sentence of a court, for example," is the definition of punishment. "Any pain, penalty, suffering, or confinement inflicted upon a person by the authority of the law and the judgement and sentence of a court, for some crime or offence committed by him, or for his failure

to perform a duty enjoined by law. It is clear from this that those who violate the socially established norm of conduct are punished. It is a basic component of criminal law. As a legal tool, punishment can be used to either prevent crime, rehabilitate the offender, or completely remove them from society. "Crimes punishable by death" is the definition of the death penalty. The foundation of all penalties is the same idea: misconduct must have a consequence. The punishment is being applied for two primary reasons. One is the idea that punishing wrongdoers deters others from committing wrongdoing, while the other is the idea that it is both just and just for someone who has acted improperly to suffer as a result. Like other penalties, the death penalty is based on the same idea.

Considering the current state of affairs, the debate over the death penalty is the most broadly pertinent one. An essential component of the criminal justice system in India is the death penalty. The presence of the death penalty is being questioned as unethical due to the growing power of the human rights movement in India. This is a strange argument, though, because it is inconceivable and ethically wrong to keep one person alive at the expense of the lives of several other members or prospective victims in the community.

The death penalty, commonly known as the capital punishment, is the execution of a criminal who has been found guilty of a crime and given a death sentence. It is important to distinguish the death penalty from extrajudicial executions that are carried out without following the proper legal procedures. Although the imposition of the sentence does not necessarily result in execution (even when it is sustained on appeal), the terms death penalty and capital punishment are occasionally used interchangeably.

MEANING OF CAPITAL PUNISHMENT¹

"Capital Punishment" refers to the most severe form of punishment. It is the penalty that must be meted out for the most heinous, unbearable, and horrible transgressions against humanity. The consequences of the death penalty have consistently been the same, even when the definition and severity of such crimes vary from country to country, state to state, and age to age. A capital sentence is commonly used to imply a death sentence in criminology, penology, and jurisprudence. The study's third goal is to look into ways that the death penalty can be used to secure the state.

HISTORY OF CAPITAL PUNISHMENT

Since the earliest times, the death penalty has been everywhere in the world. In primitive societies, terrible deaths were commonplace. The very states of presence were frequently ancestral or group fighting. The idea of punishment was overshadowed by individual retaliation and living was incredibly shabby in such a state. The two main tools used to remove dangerous elements from the gathering were death and outcast. The death penalty was therefore the most expedient means of retribution and prevention during that time. The harshest penalty is the death penalty. When in question, culpability is determined by the degree of responsibility for the illegal act, the threat it poses to the public, and the offender's demoralisation. The cost of misbehaviour that the offender expects to pay is the danger of punishment. An amazing amount of people will be stopped when the cost (sufferings) is high enough in relation to the benefit that the misbehaviour is supposed to provide. This also holds true for infractions that result in death. It is also undeniably true that the death penalty is only recommended in extreme circumstances where a high degree of guilt is involved, posing a serious threat to society.

In a primitive civilisation, there were strong feelings against counterattacks, and paying with similar currency by the victim's friends and family was seen as a just protest. The populace weren't shaped into a collection of trustworthy locals; rather, as long as social orders have been governed by the state and the state has taken on the role of guardian of individuals, it must respond to and satisfy the hurt feelings of the deceased's family members by appropriately avoiding the murderer who showed no regard for the victim's life. Furthermore, the State must and can ensure people's protection simply by appropriately rebuffing the responsible.

It's outdated to support the death penalty. Essentially, there isn't a country on earth where the death penalty has never been used. Human advancement history reveals that without a timeline. Furthermore, by appropriately rebuffing the responsible, the State can and should ensure people's security.

The death penalty is an outdated policy. The death penalty has, for the most part, never been used in any country in the globe. The history of human progress reveals that the death penalty has never been abolished as a form of retribution. Under the laws of Draco (fl. seventh century BCE), the death penalty was typically applied in ancient Greece for murder, betrayal, pyromania, and assault; nevertheless, Plato argued that it should only be applied to the most desperate.

The Romans also used it for a wide range of crimes, though for a short while during the republic, subjects were exempt. This is supported by the assessment of Sir Henry Maine, who stated that "the Roman Republic did not abolish the death penalty, but its non-application was primarily coordinated by the act of punishment or banishment and the method of enquiries."

According to the bill, situations deemed to be "to a great degree physical and rationally harming" now qualify for the death penalty. Additionally, it states that "rehash attackers" shall be executed by hanging. For those without the slightest clue, rehash attackers are people who commit sexual misconduct again, either after completing their period of parole or after serving out their sentence. Incorporating regulatory changes that may result in temporary arrangements is essential for this. It was also suggested that a prepared, authorised shooter be present in the transport with a gun. This was suggested so that a safety attempt might be made in the event that anyone attempting to board the vehicle stopped using common sense and started acting out of control. Though it's a start, the last extension is simple to deny.

THE CONNECTION OF DEATH PENALTY AND ETHICS²

The first codified set of regulations pertaining to the death penalty was found in the 18th century BC in the "Code of King Hammurabi of Babylon." In the tenth century AD¹⁶, hanging was the most popular method of execution in Britain. Later, this was adopted in India. Since there is no universal agreement over the legitimacy and constitutionality of the death penalty, pressure is mounting on nations to abolish it. As of right now, 106 nations have declared themselves "abolitionist states" and have done away with the death penalty both legally and practically. The Indian Law Commission has also recommended that the death penalty be abolished for all offences other than "terrorism" and "waging war." This trend of nations turning into "Abolitionist States" stems from moral and systemic shortcomings that make the death penalty unjustifiable.

THE DEATH PENALTY'S UNETHICAL FOUNDATION

Various schools of thought are taken into consideration when debating the morality of the death penalty worldwide. Primarily, the concept of killing someone else is regarded as bad. Nonetheless, the circumstances surrounding the killing of another person are frequently evaluated in order to ascertain if the act was morally correct or not. Thus, according to utilitarian theory, it is acceptable to kill a person in order to save or defend the lives of other innocent individuals. Contrary to what supporters of the death penalty assert, nations that have used it to prevent future crimes have not demonstrate. Contrary to what supporters of the death penalty assert, nations that have implemented the death penalty as a deterrence to future offences have not demonstrated a discernible decline in violent crime. empirical data that polled criminologists and examined trends

in crime in death penalty states reveals that the rate of crime in death penalty states was 42% higher than the rate of crime in abolitionist states.

Deterrent theory proponents make the straightforward claim that the death penalty poses a more serious threat than life in prison. Nevertheless, this has the drawback of being uniform. For a punishment to be effective, it must be used consistently. However, it is inconsistent and ineffectual because a person's life cannot always be taken away. According to US death sentence data, approximately 300 capital punishment cases were recorded in the mid-1990s, which accounted for just 1% of all offences that were reported.

This demonstrates that a tiny percentage does not have equal legal protection and that punishment is inconsistent.

The main objection to the deterrent idea is that all men, including seasoned criminals, have a need for self-preservation. If they think they would get caught, they wouldn't do anything illegal. According to a different viewpoint, some offenders commit crimes because they feel compelled to harm others or end their own lives, which defeats the objective of the death penalty. Hardened criminals expect and intend to be punished for their wrongdoings, according to studies. Indeed, the court affirmed in *Woodson v. North Carolina* that "mandatory death penalty laws are unconstitutional. Therefore, there is no reason to deny someone their life if the deterrent argument itself is ineffective in preventing crimes through the implementation of the death penalty. The anguish and suffering endured between being sentenced to the death penalty and being executed is unjustified, regardless of the criminal's horrific acts. These prisoners' trials typically lasted five to ten years.

PHILOSOPHERS' PERSPECTIVES ON THE DEATH SENTENCE

Immanuel Kant was a strong supporter of criminal punishment and retributive justice. He urged everyone to support the "Law of Retribution," or *Lex talionis*. He thought that a person should die if he had committed a murder.

Cesare Beccaria, on the other hand, advocated for "Sympathetic sentimentality and affection of Humanitarianism" and backed abolitionism. He questioned the state's right to enforce the death penalty and its effectiveness, two issues that remain at the forefront of the death penalty discussion.

INDIA'S LEGAL PERSPECTIVE ON THE DEATH PENALTY³

No one's "Right to life" may be violated or deprived, according to Article 6 of the International Covenant of Civil and Political Rights (ICCPR). It might be inferred that the preservation of life and its value is the fundamental purpose of this provision, even though Article 6(6) declares that it does not contemplate "capital punishment." The Indian Constitution's "Right to life and liberty" is safeguarded under "Article 21." In Independent India, around 755 death penalty inmates have been executed to date. The British, who were regarded as "sovereign" at the time, draughted the Indian Penal Code, 1860. According to Positive School member John Austin the Sovereign had unrestricted authority, hence section 303 granted the State the arbitrary right to take away someone's life.

Four petitions have been filed to overturn the death penalty order. A "Special Leave Petition" may be submitted to challenge a Supreme Court order that imposes the death penalty in accordance with Article 136 of the Constitution. Under Article 137, a review petition may also be submitted, and the court may, in its discretion, grant it in light of the possibility that the court erred. A review petition is a means of correcting an error, not an appeal. A curative petition may be filed to correct a wrong committed by the court in the event that a review petition is denied. In this case, the convicted person must demonstrate that the "Principles of Natural Justice" were violated or that his prejudice was based on bias.

Lastly, under Article 72, "mercy petitions" may be submitted to the "President," and under Article 161, to the "Governor." The idea behind this is to include clemency in the procedure.

In the well-known case of **Mithu Singh v. State of Punjab**, the mandatory death penalty for all criminals serving life sentences under section 303 of the Indian Penal Code, 1860, was abolished. Because section 303 deprived a man of his life, the Supreme Court ruled that it violated both Article 14 and Article 21 of the Constitution. Additionally, this case established that the mandatory life sentence violated section 235(2) of the Criminal Procedure Code, 1973, as it denied the convicted individual his "Right to be heard."

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Th. Section 354(3) of the Criminal Procedure Code, which re

quires the court to give "special reasons" for inflicting the death penalty, was also violated by such a judgement.

The **Ediga Anamma v. State of Andhra Pradesh** case demonstrates the abolitionists' worries regarding discrimination. The court noted that "crime cannot be separated from the criminal" in this instance. It went on to say that whether a prisoner is "too young" or "too old," their punishment changes. The ruling did not align with abolitionist or retributionist ideologies. The principles were upheld.

However, bias was present in the court's decision to commute her sentence, citing "her femininity, youth, social conditions, and expulsion from home" as justification. The moral code of ethics suffers when morals and sensitisation are applied selectively, even though the ideals of morality can be met since the law must be made more aware.

We observe moral relativism in the **Jagmohan Singh v. State of Uttar Pradesh** case. The highest court in this country ruled that, in contrast to the US Supreme Court, which operates under the principle of "due process," the Indian Supreme Court is not required to adhere to the "reasonableness" criteria. The court determined that the death penalty did not contravene "Article 19 since "Freedom to live" is outside the purview of "Article 19." Because every case is unique, the judges' power to impose a life sentence was thus not deemed arbitrary under "Article 14."

"If the punishment is unusually severe and there is a strong probability that it is being applied arbitrarily and does not serve judicial purpose, then it violates the Eighth Amendment," the ruling in **Furman v. State of Georgia**, which served as the foundation for several Indian rulings, stated. In a similar vein, India upholds the constitutionality of the death penalty until it is implemented in a way that makes sense.

Bachan Singh v. State of Punjab⁴ is arguably the most significant ruling pertaining to the death penalty in India.

The "Rarest of the rare" doctrine was born out of this case. "A genuine and enduring concern for the dignity of human life postulates resistance to taking a life through the instrumentality of law," the Court affirmed. That shouldn't be done unless there are extremely rare circumstances in which the alternative viewpoint is definitely foreclosed. This upholds the dignity of human life and

continues to guide India's criminal justice system today. It highlighted how common "special reasons" are for taking a person's life.

The case of **Shatrughan Chauhan v. Union of India** demonstrates the top court's humanity in light of the President's increasing denial of mercy petitions. The most recent explanation from a three-judge panel found that the president's tardiness in dismissing the mercy plea constituted in violation of Article 21. Rejecting a mercy plea took anything from one and a half to eleven years. Since the prisoner expected to die every day, that amounted to "torture." According to this ruling, "an essential mitigating factor for plea for commutation is excessive delay in rejection of mercy petition."

As a result, it is evident that the death penalty is only applied in extremely rare and exceptional circumstances under the Indian legal system and court rulings. This supports the morality that stems from the reality that human life is valuable.

RECOMMENDATIONS AND CONCLUSION

India is one of the retentionist nations that still uses the death penalty for specific offences. The legal system does not clearly define what is considered "rare," leaving it up to the judges to decide. This results in cultural, gender, and even cognitive bias. Stated differently, the defining characteristics are the judge's convictions and conscience. The death sentence has no utility in deterring future offences since it does not accomplish its deterrent function. According to the author, the death penalty should be abolished because it is a state-sponsored murder. However, abolitionist nations like Canada have seen a decrease in crime since the death penalty was abolished. The utilitarian notion of giving up one's life for the sake of others does not apply in this situation since, even after the death penalty is applied, there is no instance of "greater An effective criminal justice system is essential to a "Constitutional democracy."The rehabilitation of the convicted should be the primary objective of a criminal justice system. In many instances, the underlying "psychosocial maladjustment" may be the cause of criminal activity. To discourage repeat offences, fixing this maladjustment must be the top priority. The theoretical foundation of rehabilitation is the conviction that criminal activity is caused by unfavourable social circumstances. As a result, the convicted person has the moral right to ask for society's assistance.

Given that the death sentence is applied in the "rarest of the rare" circumstances, Indian legislation and court rulings have demonstrated a humane side. According to the author, life in prison with rehabilitation should be the norm instead than the death penalty. The death penalty is an unethical practice that has no place in the twenty-first century. In other terms, it is a violation of human rights.